

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SENSITECH INC. and DONALD W.  
BERRIAN,

Plaintiffs,

vs.

TIME & TEMPERATURE COMPANY  
D/B/A TIME 'N TEMPERATURE  
CORPORATION,

Defendant.

Civil Action No. 04-11483 (MLW)

FILED  
CLERK'S OFFICE  
2005 APR -4 P 2:12  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

**JOINT STATEMENT**

The parties respectfully submit the following joint statement pursuant to Federal Rules of Civil Procedure 16 and 26(f), Local Rule 16.1(d) and the Court's January 20, 2005 Notice in advance of the April 13, 2005 conference.

**A. Rule 26(f)/Local Rule 16.1(D) Conference**

A telephone conference was held on February 10, 2005, pursuant to Fed. R. Civ. P. 26(f) and Loc. R. 16.1(D). The following counsel participated in the teleconference:

1. John Gutkoski and Matthew Becker, Day, Berry & Howard, LLP, for Plaintiffs Sensitech Inc. and Donald W. Berrian ("Plaintiffs"); and
2. Daniel Cislo, David Sandelands, Cislo & Thomas LLP, and Kevin Gannon, Cesari and McKenna, LLP, for Defendant Time & Temperature Company d/b/a Time'N Temperature Corporation, Defendant ("TnT").

**B. Proposed Discovery Plan and Case Schedule**

<b>Event</b>	<b>Parties' Proposed Deadline</b>
Amendments to the pleadings/Joinder of parties	June 13, 2005
In the event defendant raises a defense or counterclaim for patent invalidity, defendant shall identify prior art on which it will rely in support of such defense/counterclaim. This deadline shall not be used as the basis for an objection to earlier-served discovery seeking the identification of prior art upon which defendant will rely.	October 11, 2005
Deadline for parties to have conferred and submitted to the Court a Joint Statement of claim terms to be construed and each party's proposed constructions	January 12, 2006
Close of fact discovery	February 16, 2006
Parties' opening claim construction briefs due	February 16, 2006
Parties to produce expert witness reports on issues on which that party bears the burden of proof	March 17, 2006
Parties' responsive claim construction briefs due	March 17, 2006
Responsive expert reports due	April 10, 2006
Claim Construction Hearing	Approximately May 3, 2006
Parties produce any supplemental expert reports responsive to claim construction order <sup>1</sup>	21 days after Court's claim construction order
All expert discovery to be completed	21 days after any supplemental expert reports
Any dispositive motions	30 days after close of expert discovery

<sup>1</sup> The parties note that in the event the Court adopts a claim construction different from those advocated by any party, there may be a need for limited supplemental expert reporting and discovery regarding any revised expert opinions in light of the claim construction order.

**C. Other Matters**

1. Confidentiality - The parties expect to submit a Stipulated Protective Order for the Court's approval.
2. Discovery Plan - The parties do not believe at this time there is need to depart from the standard discovery limits provided by the Federal Rules of Civil Procedure and Local Rules, but reserve the right to seek leave to do so should such need arise
3. Trial by Magistrate - The parties do not at this time consent to trial before a United States Magistrate Judge.
4. Certifications of Consultation - Appended to this joint statement at Exhibit "A" are the parties' Loc. R. 16.1(D)(3) certifications.
5. Related California Action - Defendant in this action has brought an action in the U.S. District Court for the Central District of California, CV 04-6553 (PLAx). In this action, defendants seek declarations of invalidity and noninfringement of U.S. Patent No. Re. 36,200 - the same patent-in-suit in this matter. Defendants also assert certain antitrust claims against plaintiffs. Plaintiffs have moved to transfer the California action to the District of Massachusetts. The California case is currently stayed pending this Court's ruling on Defendant's Motion to Dismiss and/or Transfer. In the event that the California action is transferred to the District of Massachusetts, each party reserves the right to seek an appropriate modification of the schedule in this case, as well as other appropriate relief.
6. Settlement Proposals - Pursuant to Local Rule 16.1(C), Plaintiffs will present TnT's counsel with a written settlement proposal no later than ten (10) days before the Scheduling Conference.

**D. Agenda for Scheduling Conference**

The parties propose the following agenda for the Scheduling Conference:

1. the discovery plan and case schedule outlined above;
2. the other matters outlined above; and
3. such other matters as the Court may find appropriate and useful to discuss.

Respectfully submitted,

TIME & TEMPERATURE COMPANY  
d/b/a TIME 'N TEMPERATURE  
CORPORATION

By its attorneys,

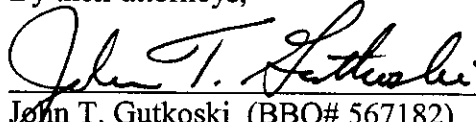
  
Thomas C. O'Konski (BBO# 378265)

CESARI AND MCKENNA, LLP  
88 Black Falcon Avenue  
Boston, MA 02210  
Telephone: (617) 951-2500  
Fax: (617) 951-3927

Daniel M. Cislo  
David B. Sandelands  
CISLO & THOMAS LLP  
233 Wilshire Boulevard, Suite 900  
Santa Monica, CA 90401

SENSITECH, INC. and  
DONALD W. BERRIAN

By their attorneys,

  
John T. Gutkoski (BBO# 567182)

DAY, BERRY & HOWARD LLP  
260 Franklin Street  
Boston, MA 02110-3179  
Telephone: (617) 345-4600  
Fax: (617) 345-4745

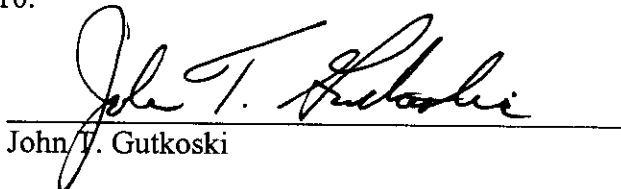
Matthew J. Becker (*pro hac vice*)  
DAY, BERRY & HOWARD LLP  
CityPlace I  
Hartford, CT 06103-3499  
Telephone: (860) 275-0100  
Fax: (203) 275-0343

Catherine Dugan O'Connor (*pro hac vice*)  
DAY, BERRY & HOWARD LLP  
One Canterbury Green  
Stamford, CT 06901-2047  
Telephone: (203) 977-7538  
Fax: (203) 977-7301

April 4, 2005

CERTIFICATE OF SERVICE

I, John T. Gutkoski, hereby certify that on this fourth day of April, 2005, a copy of the within Joint Statement was served in hand on Thomas C. O'Konski, Cesari and McKenna, LLP, 88 Black Falcon Avenue, Boston, MA 02210.

  
John T. Gutkoski